



Appellant sustained an additional left arm injury on December 28, 1986 lifting a pipe in the performance of duty. The Office accepted his claims for left knee strain, left rotator cuff tear and depression with adjustment reaction. The Office granted appellant a schedule award for 33 percent impairment of his left upper extremity on May 26, 1989. The Office entered appellant on the periodic rolls on June 15, 1990. By decision dated July 9, 1993, the Board remanded the case for the Office to resolve a conflict of medical opinion evidence regarding whether appellant's left small finger trigger symptoms were due to his accepted employment injuries.<sup>1</sup> The Board reviewed appellant's claim on February 14, 1997 and determined that the weight of the medical evidence, as represented by an impartial medical examiner's report, established that appellant's ulnar neuropathy was not related to his employment injury.<sup>2</sup> On November 2, 1999 the Board found that the Office properly denied appellant's request for review of the merits of his claim that his ulnar nerve condition was employment related.<sup>3</sup> In an Order Remanding Case dated June 14, 2006, the Board remanded the case to the Office as it did not provide the case record in a timely manner.<sup>4</sup> The facts and the circumstances of the case as set out in the Board's prior decisions are adopted herein by reference.

The Office informed appellant on January 27, 2004 that a portion of his record had been lost and requested that he provide any documentation regarding his file that he had in his possession.<sup>5</sup>

Appellant's attorney alleged on February 26, 2004 that his accepted emotional condition led to the development of adult onset diabetes. In a report dated January 13, 1999, Dr. Charles Noonan, a Board-certified psychiatrist, listed appellant's current medical conditions as diabetes, aortic valve replacement and four vessel coronary artery bypass, hypothyroidism, hypercholesterolemia and essential hypertension. In a separate report of the same date, Dr. Noonan stated that he was including an article documenting research regarding the causal link between diabetes and stress or depression.<sup>6</sup> On June 2, 2004 the Office noted that the conditions of prolonged depressive reaction and adjustment reaction with anxiety features were accepted as employment related.

In a letter dated June 8, 2004, appellant's attorney requested a schedule award due to his accepted emotional conditions. He further indicated that appellant believed that his diabetes was due to his accepted emotional conditions and requested a schedule award for this condition as well.

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<sup>1</sup> Docket No. 92-1488 (issued July 9, 1993).

<sup>2</sup> Docket No. 94-2032 (issued February 14, 1997).

<sup>3</sup> Docket No. 97-2868 (issued November 2, 1999).

<sup>4</sup> Docket No. 06-97 (issued June 14, 2006).

<sup>5</sup> The information currently contained in appellant's case record begins in January 1988. There is an additional gap in the case record from June 10, 1992 through March 22, 2002.

<sup>6</sup> The record currently before the Board does not contain this article.

By decision dated June 18, 2004, the Office granted appellant a schedule award for 66 percent impairment of his left upper extremity. This schedule award runs through May 24, 2008. On August 4, 2004 the Office granted appellant's request for a lump-sum payment of his schedule award.

By decision dated June 24, 2004, the Office denied appellant's claim that he developed diabetes as a consequence of his accepted emotional conditions. The Office also denied appellant's request for a schedule award due to his emotional conditions.

In a letter dated June 6, 2005, appellant, through his attorney, requested reconsideration of the Office's June 24, 2004 decision. He alleged that he sustained damage to his heart, pancreas and kidneys due to his July 7, 1986 employment injuries. In support of his claim, appellant submitted a series of reports from Dr. Noonan commencing August 1, 1992. Dr. Noonan stated that appellant's diabetes was directly connected to his July 7, 1986 employment injuries and resulting emotional conditions. He stated that appellant's diabetes "suddenly appeared for no other reasons that can be seen, other than a stress-induced disorder...." In a report dated July 1, 1994, Dr. Noonan noted that appellant's diabetes arose in October 1989 and attributed this condition to stress and strain due to his injury and claims before the Office. He stated: "[Appellant] had undergone extensive suffering from this, which triggered off the onset of the patient's diabetes at that time...." On November 24, 1998 Dr. Noonan opined that appellant was 100 percent disabled due to his emotional conditions.<sup>7</sup>

By decision dated September 20, 2005, the Office stated that it had not reviewed the merits of the June 24, 2004 decision. The Office reviewed Dr. Noonan's August 1, 1992 report and found that he had no medical basis for his opinion that the diabetes "suddenly appeared," the Office also noted that he provided no medical rationale for his opinion. The Office stated: "Although the medical opinion of a physician supporting causal relationship need not reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal." The Office further noted that the July 1, 1994 report did not include the article referred to by Dr. Noonan, that this textual evidence would have little probative value in support of appellant's claim. The Office stated: "Absolutely, no medical evidence has been submitted that establishes that either the diabetes was work related or that the claimant's emotional condition somehow caused injury to the claimant's heart, pancreas or kidneys." The Office also stated that the relevant medical evidence was duplicative in nature. The Office stated: "Although the physical portion of the file is not currently available, such reports were reviewed and considered in the past."<sup>8</sup>

Appellant requested that the Board review the Office's September 20, 2005 decision. Following the Board's June 14, 2006 Order Remanding Case, appellant submitted additional new evidence from Dr. Kurt Gibson M.D., addressing his various physical conditions.

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<sup>7</sup> As noted previously, these documents were not included in the record before the Office at the time of its June 24, 2004 decision.

<sup>8</sup> The Board notes that although the Office stated that it was not reviewing the merits of appellant's claim, the decision reflects that the Office weighed the evidence submitted and determined that it was not sufficient to establish appellant's claim.

By decision dated March 30, 2007, the Office stated that it had not reviewed the merits of appellant's claim. The Office reattached the memorandum to the director associated with the September 20, 2005 decision which addressed the weight of the evidence.<sup>9</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.<sup>10</sup> In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, then a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>11</sup>

A claimant bears the burden of proof to establish his claim for a consequential injury. As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>12</sup> Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>13</sup> Rationalized medical opinion evidence, is evidence which relates a work incident, work injury or factors of employment to a claimant's condition, with stated reasons of a physician.<sup>14</sup> The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>15</sup>

### **ANALYSIS -- ISSUE 1**

Appellant submitted medical evidence in support of his claim that he had developed diabetes as a consequence of his accepted emotional condition claims. Dr. Noonan, a Board-certified psychiatrist, submitted the only medical reports addressing appellant's claim for a relationship between his diabetes and his employment injuries. He first opined that appellant's adult onset diabetes was the result of his accepted emotional condition on August 1, 1992 alleging that his diabetes occurred suddenly as a stress-induced disorder. This report is not

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<sup>9</sup> The Board notes that following the Office's March 30, 2007 decision, appellant submitted new evidence. As the Office did not review this evidence in its March 30, 2007 decision, the Board will not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>10</sup> *Albert F. Ranieri*, 55 ECAB 598, 602 (2004); A. Larson, *The Law of Workers' Compensation* § 10.01(2000).

<sup>11</sup> *Charles W. Downey*, 54 ECAB 421, 422-23 (2003).

<sup>12</sup> *Id.*

<sup>13</sup> *Steven S. Saleh*, 55 ECAB 169, 172 (2003).

<sup>14</sup> *Charles W. Downey*, *supra* note 11.

<sup>15</sup> *Id.*

sufficient to meet appellant's burden of proof. Although Dr. Noonan opined that there was a causal relationship between appellant's diabetes and stress, he did not adequately explain how adult on set diabetes would be caused or contributed by the accepted emotional condition.

In a report dated July 1, 1994, Dr. Noonan attributed appellant's diabetes to both his accepted emotional conditions and to the development of his claims by the Office. While he attributed his condition to appellant's employment injuries, he did not offer any medical reasoning in support of the stated condition on causal relationship. Without medical rationale, this report is not sufficient to meet appellant's burden of proof in establishing a consequential injury.

In a January 13, 1999 report, Dr. Noonan suggested that appellant's diabetes was related to his stress and depression and that he was enclosing an article documenting this relationship. The record does not contain any such article. Furthermore, Dr. Noonan's January 13, 1999 report does not contain a clear explanation as to how appellant's diabetes was due to his employment injuries. Appellant has not submitted sufficient rationalized medical opinion evidence establishing a causal relationship between his accepted emotional conditions and his diagnosed diabetes. He has not met his burden of proof in establishing a consequential injury in this regard.<sup>16</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

The schedule award provision of the Federal Employees' Compensation Act<sup>17</sup> and its implementing regulations<sup>18</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.

No schedule award is payable for a member, function or organ of the body that is not specified in the Act or in the implementing regulations.<sup>19</sup> The Act's list of scheduled members includes the eye, arm, hand, fingers, leg, foot and toes.<sup>20</sup> The Act also specifically provides for compensation for loss of hearing and loss of vision.<sup>21</sup> Section 8107(c)(22) of the Act vests the Secretary of Labor with the authority to expand the list of scheduled members to include "any

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<sup>16</sup> Charles W. Downey, *supra* note 11 at 422-23.

<sup>17</sup> 5 U.S.C. § 8107.

<sup>18</sup> 20 C.F.R. § 10.404 (1999).

<sup>19</sup> Brent A. Barnes, 56 ECAB \_\_\_\_ (Docket No. 04-2025, issued February 15, 2005).

<sup>20</sup> 5 U.S.C. § 8107(c).

<sup>21</sup> *Id.*

other important external or internal organ of the body....”<sup>22</sup> In accordance with the authority granted under section 8107(c)(22), the Secretary of Labor added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the list of scheduled members.<sup>23</sup> Neither the Act nor the regulations authorize payment of a schedule award for the brain, an emotional condition, diabetes or pancreas.<sup>24</sup>

### **ANALYSIS -- ISSUE 2**

Appellant requested a schedule award due to his emotional condition and his diabetes. Neither the brain nor the pancreas is included among the list of scheduled members under the Act and regulations.<sup>25</sup> Thus, he cannot receive schedule awards for his emotional condition or his diabetes under the Act. There is no medical evidence that appellant’s accepted emotional condition has affected any scheduled members. The medical evidence of record fails to establish that appellant has permanent impairment of a scheduled member due to these conditions. Accordingly, the Office properly denied appellant’s claim for a schedule award.

### **CONCLUSION**

The Board finds that the Office reviewed the merits of appellant’s claims on March 30, 2006 and that he has not met his burden of proof in establishing that he developed diabetes as a consequence of his accepted emotional conditions. The Board further finds that appellant is not entitled to a schedule award for either his diabetes or his emotional condition.

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<sup>22</sup> 5 U.S.C. § 8107(c)(22).

<sup>23</sup> 20 C.F.R. § 10.404(a).

<sup>24</sup> 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a).

<sup>25</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: November 23, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board